IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.9461 OF 2004

Shri Raghunath Balwant Shinde, .. Petitioner

Vs

1. Shri Yashwant Krishna Deshmukh

and ors. .. Respondents

Shri Umesh Mankapure, for the petitioner.

Mr Milind Deshmukh, for respondent nos 1 to 5.

CORAM : D.B.BHOSALE,J.

DATE : 15th December, 2004.

PC:

1. Heard the learned counsel for the parties.

2. Rule. Rule returnable forthwith. Mr Deshmukh, learned counsel, waives service for respondent nos 1 to 5. By consent, rule is heard finally.

3. This petition challenges the order dated 6.10.2004 by which the application- Exhibit-125 filed by the respondents - defendants has been allowed. By that application, the respondents prayed for an appointment of a Court Commissioner to visit and inspect

the suit land and the disputed way.

Admittedly, the respondents in 2001 had made an application seeking appointment of a Court Commissioner for the same purpose and that application was allowed by the trial Court vide order dated 6.8.2001. The Court Commissioner, after inspecting the suit land and the disputed way, had submitted his report on 18.10.2001 (Exhibit-68). Since the respondent was not happy with the report, he filed objections to the said report. It is common ground between the learned counsel for the parties that the objections filed by the respondents have not been decided so far. Against this backdrop, the instant application -Exhibit-125 came to be filed seeking an appointment of a Court Commissioner for the same purpose afresh. The learned Judge has allowed the application. At the outset, in my opinion, the order appointing a Court Commissioner again for the same purpose without expressing any opinion on the earlier report of the Court Commissioner and/or without deciding the objections raised by the aggrieved party against the earlier report of the Court Commissioner cannot be sustained. If such applications seeking appointment of a Court Commissioner are entertained, then it would become endless exercise. The learned Judge ought to

have decided the objections filed by the respondent to the earlier report before dealing with the application filed by the respondent seeking appointment of the Court Commissioner afresh. In the circumstances, the order impugned in the present petition is set aside. It is open for the respondents to approach the trial Court and make a request to decide their objections. Rule is disposed of.

(D.B.BHOSALE, J.)